

Bill 104 (2017)  
Additional Testimony



**Hawaii Funeral & Cemetery Association, Inc.**  
1330 Maunakea Street, Honolulu, Hawaii 96817

**Bill 104** – Written Testimony in **Opposition** of  
Relating to the establishment of fees and charges  
for services of the Department of the Medical Examiner

February 13, 2018

TO: Joey Manahan, Budget Committee Chair  
Brandon Elefante, Budget Committee Vice Chair  
Ikaika Anderson, Budget Committee Member  
Kymberly Marcus Pine, Budget Committee Member

HEARING DATE/TIME: February 14<sup>th</sup>, 2018 9:00am

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Dear Budget Chair Manahan, Vice Chair Elefante and Committee Members

My name is Jay Morford, President and Legislative Chair for the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). The HFCA is in strong opposition to Bill 104 ("Bill") for the following reasons.

**Summary:** We stand on our previous written testimony (attached) in opposition of the "Bill". In addition to our previous testimony submitted to full council on December 5<sup>th</sup> 2017 we would like to add the following timeline of events, our comments and suggestion moving forward.

The Directors from the Hawaii Funeral & Cemetery Association had the opportunity to meet with Chief Medical Examiner Christopher Happy, Managing Director Roy Amemiya, Jr. and Deputy Managing Director Georgette T. Deemer on February 2, 2018. At the conclusion of that meeting it was determined that the Medical Examiner's office was willing to work with the HFCA and make amendments to the current "Bill". The HFCA was asked to send our suggestions into the Medical Examiner's ("ME") office. In addition, the HFCA in good faith invited Dr. Christopher Happy to attend a meeting that was previously scheduled with the Chair of Budget Committee, Mr. Joey Manahan. We felt this would allow both parties to communicate what had taken place and how we planned to move forward with the "Bill".

**Timeline of events following the meeting with the Managing Director**

**February. 6<sup>th</sup> 2018:** Dr. Happy sent the HFCA Directors the following email, quote:

"Hi Jay,

I have asked our ASO (Office Manager), John Burns to work with you and the Association to amend the bill as needed. He will be reporting to me. Please work with him to forge the bill in a mutually satisfactory fashion. I have cc'ed John to this email, so you have his contact info.

Best Regards and thanks,

Chris"

**February 9, 2018:** HFCA redline draft (attached) was sent in the late afternoon to Mr. Burns and Dr. Happy.

**February 12, 2018:** Mr. John Burns shows up to the prescheduled HFCA/Budget Council Chair meeting instead of Dr. Happy. There was no prior communication from Dr. Happy regarding Mr. Burns attendance. Prior to Mr. Manahan's arrival the HFCA Directors and Mr. Burns had discussion about changes in the "BILL". Mr. Burns became defensive stating he had personally written the "Bill" and was happy the way it was. The HFCA Directors, now confused, spoke about the agreement that had been discussed with Dr. Happy and the City Managing Directors. Mr. Burns stated very clearly he was not willing to negotiate the "BILL", he wanted to see what council would do at committee and what Mr. Manahan had to say. The purpose of inviting Dr. Happy to the HFCA/ Budget Chair meeting was to help Mr. Manahan understand what had transpired during the Managing Director's meeting. The circumstances had now changed, the interaction with Mr. Burns was becoming more contentious and he was asked to leave prior to the meeting formally starting. Mr. Burns comment to the HFCA Directors as he left. He stated, "You won't like "Plan B". When asked what "Plan B" was, he stated, "We will start dropping the bodies off at your establishments. We can do that!" We then stated, "that sounds like a threat," and he stated "that is not a threat, it is a promise. I don't need a "BILL" to do that."

We are formally submitting our purposed changes to the "BILL". The HFCA agrees there is responsibility on behalf of our businesses to work with the ME's office and pick up when we are legally committed and in a timely manner. The items that we feel strongly against are redlined in the "BILL" and/ or new language added.

**Concerns:**

- 1) Administrative costs to the ME's office associated with implementation and management of the storage fees outlined in the "BILL";
- 2) The added burden a storage fee will add to families who have lost a loved one under difficult circumstances;
- 3) The lack of infrastructure on how the storage fees will be implemented, managed and tracked, which could result in potential lawsuits from individuals or businesses for wrongful fines;
- 4) Medical Examiners scheduled times for Removals:
  - a) Included are the last "2" removal time schedules from the "ME" office. 1<sup>st</sup> memo dated on Sept 15<sup>th</sup> 2017, "Removal hours effective on Monday Sept 25<sup>th</sup> 2017" allows only 22 hours a week for removals. December 7<sup>th</sup> 2017 – "New body release policy effective on December 7<sup>th</sup> 2017, continues expanded release hours", allows 23 hours a week for removals.
  - b) 5 Memos from the "ME" office sent on Dec. 15<sup>th</sup>, 2017, Dec. 20<sup>th</sup> 2017, Dec. 22<sup>nd</sup> 2017, Dec. 29<sup>th</sup> 2017, and Jan. 31<sup>st</sup> 2018, all limiting the time on which a removal can be done. If the "ME" is having storage capacity problems it may help if the funeral homes can do removals throughout a full 40 hour work week.
- 5) The lack of legal authority of the Medical Examiner's Office to impair or revoke a funeral or cemetery establishment's license and the potential civil and administrative repercussions the ME could face for revoking a business license without the administrative authority to do so and without due process.

Finally, the HFCA was not contacted prior to this "BILL" being introduced and therefore feels that the "BILL" should be deferred until such time as the HFCA can work together with the ME's office to address not only the ME's concerns but our own concerns. Section 6-66.3 Fees (1) – City Council needs to seriously consider the insensitivity coming out of this section relating to fines assessed on families.

As the HFCA has previously stated, we are committed to work with the Medical Examiner's office on the "Bill".

Sincerely,

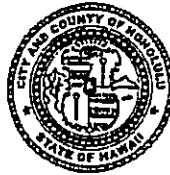


Hawaii Funeral & Cemetery Association ("HFCA")

DEPARTMENT OF MEDICAL EXAMINER  
CITY AND COUNTY OF HONOLULU

835 IWILEI ROAD • HONOLULU, HAWAII 96817  
PHONE: (808) 768-3090 • FAX: (808) 768-3099 • WEB: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR




CHRISTOPHER HAPPY, M.D.  
CHIEF MEDICAL EXAMINER

RACHEL LANGE, M.D.  
FIRST DEPUTY MEDICAL EXAMINER

MASAHIKO KOBAYASHI, M.D., PH. D.  
DEPUTY MEDICAL EXAMINER

September 15, 2017

TO: OAHU FUNERAL HOMES AND MORTUARIES  
FROM: DR. CHRISTOPHER HAPPY, CHIEF MEDICAL EXAMINER   
SUBJECT: NEW DECEDENT RELEASE HOURS

In response to your request for increased hours of access to our facility for the release of decedents, we are implementing the following schedule **effective Monday, September 25, 2017:**

Monday	Release from 2:00 p.m. – 4:00 p.m.
Tuesday - Friday	Releases from 11:00 a.m. – 4:00 p.m.
Saturday, Sunday, and State Holidays	No releases

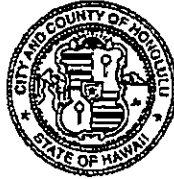
To help us prepare for your releases, be sure to fax the release request to us on the day you enter into a contract concerning each decedent in our custody.

I hope this accommodation will help expedite your recovery of decedents from the Department of the Medical Examiner.

DEPARTMENT OF THE MEDICAL EXAMINER  
**CITY AND COUNTY OF HONOLULU**

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CHIEF MEDICAL EXAMINER

MASAHKO KOBAYASHI, M.D., Ph.D.  
FIRST DEPUTY MEDICAL EXAMINER

December 7, 2017

TO: All Mortuaries, Funeral Homes and Crematories

FROM: Christopher Happy, M.D.  
Chief Medical Examiner *CHH*

SUBJECT: New Release Fax Number and New Release Policies and Procedures

I am pleased to announce that the Department of the Medical Examiner has instituted new body release policies and procedures in response to your comments and to streamline body releases from our facility.

Effective Monday, December 11, 2017, the new fax number for body releases only will be

**808-768-9728**

Note that our general fax number remains 808-768-3099. Please continue using the general fax number for all death certificate clearance requests. We will process body release requests directed to our general number in the ordinary course through December 17, but not after that date.

Our other major change is that our Prosecutor Assistants will retrieve bodies from our morgue. Our Medicolegal Investigators cannot release bodies. And no longer will your transport personnel be required or allowed to perform this task. Please advise them that they are not to enter the autopsy suite or our refrigerated storage henceforth. The morgue can be reached at 768-3070. Please notify me if anyone encounters difficulties in this respect.

We will continue our expanded release hours of 1:00-4:00 PM on Monday and 11:00-4:00 PM Tuesday through Friday. No releases are performed on weekends or holidays.

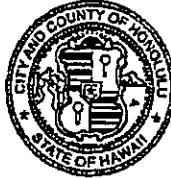
I trust these improvements will facilitate smoother and more timely releases from MED.

Thank you.

DEPARTMENT OF THE MEDICAL EXAMINER  
**CITY AND COUNTY OF HONOLULU**

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CHIEF MEDICAL EXAMINER

MASAHITO KOBAYASHI, M.D., Ph.D.  
DEPUTY MEDICAL EXAMINER

## FACSIMILE TRANSMISSION NOTE

**DATE:**

**TO:** ALL MORTUARIES ON OAHU

**FROM:** Department of the Medical Examiner  
(808) 768-3090, (808) 768-3099 fax

**RE: BODY RELEASES**

For (date) 12/15/2017 body releases will NOT be allowed during  
the hours of 1245 to 1330 due to staffing  
constraints. Releases will resume as normal at 1330.

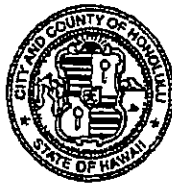
Please be sure to contact this department PRIOR to dispatching  
transportation services to ensure that release can be done.

Mahalo for your cooperation.

DEPARTMENT OF THE MEDICAL EXAMINER  
**CITY AND COUNTY OF HONOLULU**

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FIRST DEPUTY MEDICAL EXAMINER

**FACSIMILE TRANSMISSION NOTE**

TO: OAHU FUNERAL HOMES & MORTUARIES

FROM: C. Caldwell

DATE: 12/20/17

SUBJECT: BODY RELEASES

There will be **LIMITED BODY RELEASES** today, 12/20/17, from  
0900-1100 hours ONLY due to insufficient staffing.

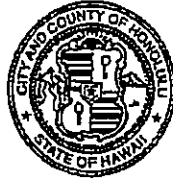
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**CITY AND COUNTY OF HONOLULU**

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FIRST DEPUTY MEDICAL EXAMINER

**FACSIMILE TRANSMISSION NOTE**

TO: OAHU FUNERAL HOMES & MORTUARIES

FROM: C. Caldwell

DATE: 12/22/17

SUBJECT: BODY RELEASES

There will be NO BODY RELEASES today, 12/22/17, due to insufficient staffing.

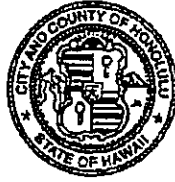
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DEPUTY MEDICAL EXAMINER

## FACSIMILE TRANSMISSION NOTE

**DATE:**

**TO:** ALL MORTUARIES ON OAHU

**FROM:** Department of the Medical Examiner  
(808) 768-3090, (808) 768-3099 fax @

**RE: BODY RELEASES**

For (date) 12/28/17 body releases will NOT be allowed during  
the hours of 1245 to 1330 due to staffing  
constraints. Releases will resume as normal at 1330.

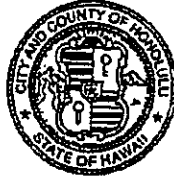
Please be sure to contact this department **PRIOR** to dispatching  
transportation services to ensure that release can be done.

Mahalo for your cooperation.

DEPARTMENT OF THE MEDICAL EXAMINER  
**CITY AND COUNTY OF HONOLULU**

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DEPUTY MEDICAL EXAMINER

## FACSIMILE TRANSMISSION NOTE

DATE: 1/30/18  
TO: ALL MORTUARIES ON OAHU  
FROM: Department of the Medical Examiner  
(808) 768-3090, (808) 768-3099 fax

### RE: BODY RELEASES

For (date) 1/31/18 body releases will NOT be allowed during  
the hours of 2pm to 3pm due to staffing  
constraints. Releases will resume as normal at 3pm.

Please be sure to contact this department PRIOR to dispatching  
transportation services to ensure that release can be done.

Mahalo for your cooperation.

A handwritten signature, likely of the Chief Medical Examiner, is written in cursive.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE-----  
BILL 104 (2017)---

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**A BILL FOR AN ORDINANCE**

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RELATING TO THE ESTABLISHMENT OF FEES AND CHARGES FOR SERVICES  
OF THE DEPARTMENT OF THE MEDICAL EXAMINER.

BE IT ORDIANCED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to establish fees and charges for services of the Department of the Medical Examiner.

SECTION 2. Chapter 6, Revised Ordinances of Honolulu 1990, is amended by adding a new Article 45 to read as follows:

"Article 66. Fees and Charges for Services of the Department of the Medical Examiner

Sec. 6-66.1 Definitions.

Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

"County" means the City and County of Honolulu.

"Department" or "department of the medical examiner" means the department of medical examiner of the City and County of Honolulu.

"Human remains" means the corpse or any part thereof of a deceased person.

"Funeral Establishment," "cemetery," "mortuary," and "crematory" have the respective meanings set forth in Hawaii Revised Statutes Section 531B-2.

Sec. 6-66.2 Administration.

The medical examiner shall be responsible for the administration of the processing of requests for the services of the department.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 1\_0\_4\_(2\_0\_17\_)

**A BILL FOR AN ORDINANCE**

**Sec. 6-66.3 Fees.**

- (a) Storage Fee. When the department is required to store human remains, the department shall charge \$50.00 per day, ~~including-excluding~~ weekends and holidays, as follows:
- (1) ~~To the deceased person's estate, beginning on the 5<sup>th</sup> day following notification of death and ending on the date described below in (a)(2); and~~
  - (2) To the funeral establishment, cemetery, mortuary, or crematory having principal responsibility for disposition of the deceased person, beginning on the ~~3rd 5<sup>th</sup>~~ **business** day following the ~~commitment or contract to provide any services pertaining to the deceased person~~ department receiving the signed next-of-kin authorization from the funeral establishment, cemetery, mortuary or crematory authorizing the decedent's release into the care of such establishment. The department will be open Monday through Friday from 9 00am – 4 00pm for removal. Documentation will be provided to the funeral establishment, cemetery, mortuary or crematory detailing the computation of any storage fees and providing the process to file an appeal to object to the imposition of a storage fee.
  - (3) The computation of storage fees shall exclude days between the date of filing an application for indigent disposition of remains and the date such application is granted or denied.
  - (4) ~~No portion of the fees described above in (a)(2) shall be directly or indirectly charged to the deceased person's estate or any person providing financial assistance for the disposition of remains. All such amounts shall be the sole responsibility of the funeral establishment, cemetery, mortuary, or crematory having responsibility for disposition of the deceased person. Failure to comply with this provision may result in impairment or loss of licenses to provide funeral services.~~
- (b) Professional Service Fee. When the department renders professional services for civil cases, the department shall charge \$200.00 per hour for services of the forensic pathologists and \$100.00 per hour for other department employees, in each instance including preparation, travel, stand-by and testimony time.
- (c) Tissue Recovery Facility Use Fee. The department shall charge \$100.00 per recovery for use of facility, materials, and time for assistance of department personnel.

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- (d) All fees collected pursuant to this section shall be deposited into the general  
fund  
**CITY COUNCIL** ORDINANCE \_\_\_\_\_



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**A BILL FOR AN ORDINANCE**

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**Sec. 6 66.4 Exemption from payment of fees and charges.**

- (a) The following agencies and organizations may be exempted from the payment of fees established in this article, as well as charges to cover mailing and other handling costs:

- (1) Government agencies requiring the records or publications for official purposes.

- (b) The medical examiner may waive fees or charges, or both, for the following:

- (1) Educational materials necessary for carrying out an agency program;  
(2) Cases in which the delay in releasing human remains is at the behest of the department; and  
(3) Dispositions of human remains for which indigent burial assistance has been granted.  
(4) Special circumstances relating to financial or personal hardship.  
(5) Where the funeral establishment, cemetery, mortuary or crematory, in good faith, has reason to believe the signed next-of-kin authorization may not be valid or where the funeral establishment, cemetery, mortuary or crematory has notice of a dispute among next-of-kin regarding removal or disposition.  
(6) Other special circumstances as may be determined by the department.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 1 04 (2 0 1 7)

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**A BILL FOR AN ORDINANCE**

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SECTION 3. This ordinance takes effect on July 1, 2018.

**IE**

(br)

DATE OF INTRODUCTION:

**NOV 21 2017**

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu





Hawaii Funeral & Cemetery Association, Inc.  
1330 Maunakea Street, Honolulu, Hawaii 96817

Written Testimony in **Opposition** of  
**Bill 104** – Relating to the establishment of fees and charges  
for services of the Department of the Medical Examiner

December 5, 2017

TO: Ron Menor, Council Chair  
Ikaika Anderson, Council Vice Chair,  
Joey Manahan, Budget Committee Chair,

HEARING DATE/TIME: December 6th, 2017 10:00am

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Dear Chair Menor, Vice Chair Anderson and Budget Chair Manahan

My name is Jay Morford and I am the Vice President and Legislative Chair for the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). The HFCA is in strong opposition to Bill 104 ("Bill") for the following reasons.

**Summary:** The HFCA empathizes with the Medical Examiner ("ME") and the limited storage space they have for decedents. This is a situation all of the funeral homes face when dealing with the loss of life and having families making decisions in a timely manner. Hawaii culturally, generally doesn't have services for 3-4 weeks after the funeral home has received their loved one. This can affect limited refrigeration but we understand the dynamics and make it work. We have worked closely with the ME's office in the past and will continue to do so. However, we do feel that the City's proposal of this Bill is written without taking into consideration any of the following:

- 1) Administrative costs to the ME's office associated with implementation and management of the storage fees outlined in the Bill;
- 2) The added burden a storage fee will add to families who have lost a loved one under difficult circumstances;
- 3) The lack of infrastructure on how the storage fees will be implemented, managed and tracked, which could result in potential lawsuits from individuals or businesses for wrongful fines and illegal revocation of a business license; and
- 4) The lack of legal authority to impair or revoke a funeral or cemetery establishment's license.

Finally, the HFCA was not contacted prior to this Bill being introduced and therefore feels that the Bill should be deferred until such time as the HFCA can work together with the ME's office to address not only the ME's concerns but our own concerns relating to the ME's office and it's personnel.



## **HECA Response to Specific Sections of the Bill:**

### **I. Section 6-66.3 Fees.**

- (a) **Storage fee** - The Bill proposes that a storage fee will be charged on weekends and holidays, however currently the ME's office is not open on weekends and holidays and has limited hours during the day for removals. The ME's office will need to be open from at least 8am- 5pm, 7 days a week and 365 days a year in order to charge a storage fee for these days.
- (1) **Family Designating a Funeral Home within 5 days of notification of death.** It is unreasonable to force the family of a decedent into making a determination of what funeral home they want to designate within 5 days from notification of death. Families just had a death and they are not thinking clearly and need to be allowed some leniency when making these important decisions. Assessing a fine against the decedent's estate for not making such a crucial and personal decision quickly enough seems to go against public policy and forces a family to make financial decisions under traumatic circumstances in order to avoid the fine. This goes against the spirit of consumer protection laws such as the Federal Trade Commission's Funeral Rule, which seeks to protect families of decedents entrusted with making difficult financial decisions when they are most vulnerable. Furthermore, 5 days seems to be arbitrary. The Bill does not address how "the 5<sup>th</sup> day following notification of death" will be determined, or how the ME's office will verify this in order to ensure accurate calculation of the fine, if applicable.
- (2) **Designated funeral home having responsibility for disposition of the decedent.** The language stating that a funeral home has 3 days following "commitment or contract" to provide funeral services before a storage fee is charged is inaccurate and does not take into account practical circumstances regarding the *release* of a decedent. A funeral home may have been pre-selected to handle the disposition (so a contract may already be in place), however next of kin must still be available to *sign a release* for that funeral home to legally remove the decedent from the ME's facility. Families may make a decision to release a decedent to a particular funeral home and then change their mind within 24-36 hours. The timeframe allowed for pickup can change.
- (4) **Revocation of establishment license.** The City of Honolulu has no legal authority to make decisions with regard to a cemetery or funeral home's license. Cemeteries and funeral homes are regulated by the State of Hawaii under the Department of Commerce and Consumer Affairs. Pursuant to Hawaii Revised Statutes Sections 441-19 and 441-23, the director of the Department of Commerce and Consumer Affairs has the authority to grant, fine suspend or revoke a license. The language in the Bill regarding "impairment or loss of licenses" creates a conflict with the power and authority of the State. Furthermore, there is no legal authority allowing the City of Honolulu to propose a superseding law regarding licensure. As such, this section of the Bill as currently drafted lacks legal authority and will likely result in a lawsuit brought against the City of Honolulu.
- (b) **Professional Fees.** The Medical Examiner's office is funded by taxpayer's dollars and should not be operating like a private business unless they get a business license and pay GE tax like all other businesses. We believe this is a conflict of interest and turn a city agency into a profitable business charging for their services.

(c) Refer (b)

(d) Refer (b)

### **II. Section 6-66.4 Exemption from fees and charges**

- (a) 1. No comment
- (b) 1, 2 and 3. Waiving fees, etc. – Appears to be left to the discretion of one person and allows for inconsistencies.

### Questions to City Ordinance Bill 104

1. How will charging a storage fee reduce the limited storage space in the ME's facility?
2. Who in the ME's office will administer the fees and fines for compliance of this ordinance? Will the ME need to hire additional staff to handle this new ordinance?
3. Under Sec. 6-66.3 (a) (1), how do you determine the "5<sup>th</sup> day following the notification of death"?
4. Under Sec. 6-66.3 (a) (2), what is the meaning of "principal responsibility"? Does this conflict with current disposition laws? Also, how do you determine the "3<sup>rd</sup> day following the commitment or contract to provide any services"?
5. Under Sec. 6-66.3 (a) (3), is confusing language regarding the computation of storage fees.
6. Under Sec. 6-66.3 (a) (4), how do you define "indirectly charged"? Further, what exactly does the ME mean by stating that failure to comply "may result in impairment or loss of licenses to provide funeral services".
7. Under Sec. 6-66.3 (b), what is meant by "professional services for civil cases"? Also, how do you define "services" for forensic pathologists? What all employee services are included the wording "preparation, travel, stand-by and testimony times"?
8. Under Sec. 6-66.3 (c), need to define the meaning of "use of facility, material, and time for assistance of department personnel".
9. Under Sec. 6-66.3 (d), why would the fees go directly to the general fund? Does the ME have full access to these fees if swept into the general fund? If not, how will they pay to administer these new changes? Will they need to hire an additional employee?
10. Under Sec. 6-66.4 (a) (1) government agencies are exempt from paying any fees, however, under Sec. 6-66.3 (b), it appears that government employees may be charged for certain services.
11. Under Sec. 6-66.4 (b) (2), how do you define at the "behest of the department"?

Thank you for your consideration.

Hawaii Funeral and Cemetery Association, Inc

Cc:

Ernest Martin, Chair Emeritus  
 Brandon Elefante – Vice Chair Budget Committee  
 Kymberly Pine – Budget Committee  
 Ann Kobayashi – Council Member  
 Carol Fukunaga – Council Member  
 Trevor Ozawa – Council Member